

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK L. CUNNINGHAM,	)	
	)	Civil Action No. 11-972
Plaintiff,	)	
	)	
vs.	)	
	)	Judge Arthur J. Schwab/
AARON RIHN; and ROBERT PIERCE &	)	Magistrate Judge Maureen P. Kelly
ASSOCIATES,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

The above-captioned prisoner civil rights complaint was received by the Clerk of Court on July 27, 2011, and was referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation, ECF No. [3], filed on August 18, 2011, recommended denial of Plaintiff's IFP motion because Plaintiff had accumulated "three strikes" pursuant to 28 U.S.C. § 1915(g) of the Prison Litigation Reform Act ("PLRA"). Service was made on the Plaintiff at his address of record. Plaintiff was given until September 6, 2011 by which to file objections. Plaintiff did not file objections but instead filed a Motion for Appointment of Counsel, which purportedly was signed on August 30, 2011. ECF No. [4].

Given that Plaintiff has three strikes, there is nothing that appointment of counsel could do to cure that defect and so the motion for appointment of counsel is moot until and unless Plaintiff can pay the entire filing fee.

Hence, the following order is entered.

**AND NOW**, this 13<sup>th</sup> day of September 2011;

**IT IS HEREBY ORDERED** that the Plaintiff's motion for leave to proceed in forma pauperis is **DENIED**. Plaintiff is **ORDERED** to pay the entire filing fee by September 30, 2011 or the case will be dismissed for failure to prosecute.

**IT IS FURTHER ORDERED** that the Report and Recommendation, ECF No. [3], filed on August 18, 2011 by Magistrate Judge Kelly, is adopted as the opinion of the court.

s/ Arthur J. Schwab  
Arthur J. Schwab  
U.S. District Judge

Dated: September 13, 2011

cc:

DERRICK L. CUNNINGHAM  
JU-3758  
SCI Chester  
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